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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-202104

DATE: July 2, 1981

MATTER OF: Secret Service agents' meal expenses while on 24-hour-a-day protective duty

DIGEST: Secret Service agents who are required to purchase meals at high cost hotels or other facilities at their headquarters as a result of 24-hour-a-day protective duty assignments may not be paid a daily allowance to compensate for the added costs they incur, since such an allowance is prohibited by 5 U.S.C. 5536; further, such assignments do not normally involve extreme emergencies involving danger to human life so as to permit the Government to furnish the agents' meals from appropriated funds under the rule in 53 Comp. Gen. 71 (1973).

The Acting General Counsel of the Department of the Treasury has asked whether Secret Service agents, whose permanent duty station is in the city in which they are required to perform 24-hour-a-day protective assignments, may be paid a flat amount a day to compensate them in whole, or in part, for the extra costs they incur by being required to buy the meals in the same hotels or facilities as the persons whom they are protecting.

The issue in this case is whether there should be an exception, because of the unusual working conditions associated with 24-hour-a-day protective service, to the general rule prohibiting any payment of appropriated funds for a civilian employee's meals while he is working at his permanent duty station. There may be no exception to the general rule that meals at headquarters may not be paid for from appropriated funds in the circumstances here involved.

The persons subject to the Secret Service agents' protection frequently are accommodated in superior hotels. Since the agents are required to be in the immediate proximity, they are, according to the submission, " * * * compelled to incur out of pocket costs for meals significantly in excess of what they would incur if permitted to eat at their homes or elsewhere at their discretion. Often they incur costs in excess of those they would incur were they merely government employees traveling on government business."

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Certain of our decisions which hold that appropriated funds may not be used to pay the cost of meals obtained by civilian Government employees at headquarters rely upon a specific prohibition in the Federal Travel Regulations. The submission points out that the travel regulations are not involved because the employees here in question are not traveling. It is suggested that payments to the agents in this situation should not be characterized as an augmentation of their statutory salary but should be characterized as an expense payment from the agency's appropriations such as an informant's fee or contraband purchase that would be "necessary" for the operation of the Secret Service.

The basic rule regarding payments to employees is in 5 U.S.C. 5536 (1978), which provides that no employee of the Government "unless specifically authorized by law," shall receive any pay or allowance in addition to that provided by statute. The decision of 42 Comp. Gen. 149 (1962) specifically recognized this provision (formerly 5 U.S.C. 71) as a basis for denying Government payments for meals provided to the employees on duty at headquarters. It is our view that payment of an allowance to employees to cover the approximate extra costs they incur for meals they must eat by virtue of their assignments at high priced hotels or other facilities at their headquarters is specifically prohibited by 5 U.S.C. 5536.

This provision was also recognized as precluding payment of an allowance to employees whose duty sites were remote from the nearest established communities or suitable places of residence. Commuting expenses, hardship, and inconvenience for those employees were appreciably more than normally encountered. However, specific legislation was needed so that "Notwithstanding section 5536 of this title" an allowance not to exceed \$10 a day could be paid. See 5 U.S.C. 5942 (1978).

We have authorized Government purchase of meals for employees at headquarters based upon findings that furnishing these meals was necessary in an extreme emergency involving danger to human life or destruction of Federal property. In 53 Comp. Gen. 71 (1973) food was provided to Federal Protective Services Officers of the General Services Administration (GSA) who were assembled in

readiness to reoccupy a building of the Bureau of Indian Affairs which had been taken over by force. Although we were reluctant to make an exception to the general rule against paying for meals at headquarters, we found that a situation of extreme emergency "* * * involving danger to human life and the destruction of Federal property * * *" existed which justified the characterization of the expense as "* * * necessarily incidental to the protection of property of the United States during an extreme emergency." We went on to state:

"However, whether payment of such expenses would be proper in similar cases that may arise in the future would necessarily depend on the facts and circumstances present in each case, having in mind that work in occupations such as those of policemen, firemen, security guards, etc., often is required to be performed under emergent and dangerous conditions and that such fact alone does not warrant departure from the general rule against payment for employees' meals from appropriated funds. Consequently, and since such cases are rare, we do not believe it necessary or feasible to attempt to describe herein the circumstances under which similar payments may be deemed to be proper in future cases." 53 Comp. Gen. at 75.

In Richard D. Rogge, B-189003, July 5, 1977, emergency food supplies were provided to Federal Bureau of Investigation (FBI) employees who were stranded and maintaining the essential functions of the Buffalo office during a severe blizzard. The decision allowed the food expenses to be paid out of appropriated funds of the FBI because "[t]he emergency conditions clearly presented 'danger to human life'."

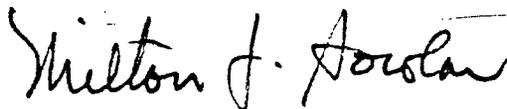
Although we can conceive that situations may arise where a Secret Service agent performing 24-hour-a-day protective service would find himself in an extreme emergency involving danger to human life, which would justify characterization of a meal expense as necessary to the operation of the agency and therefore payable out of appropriated funds, we did note in 53 Comp. Gen. at 75 that work in occupations such as those of policemen, firemen and security guards often is required to be performed under emergency and dangerous conditions and that

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"such fact alone does not warrant departure from the general rule against payment for employees' meals from appropriated funds."

We do not find the usual 24-hour-a-day protective service satisfies the extreme emergency situation involving danger to human life criterion that is necessary to fit within the exception to the general rule. And under that rule the increased cost of food due to unusual working conditions is not a sufficient reason by itself to pay for the costs of meals out of appropriated funds. Geological Survey Inspectors' Lunch Expenses, B-194798, January 23, 1980.

Accordingly, payment of an allowance to the Secret Service agents for meals during their 24-hour-a-day protective service at headquarters may not be made from the Department of the Treasury's general appropriations. Further, purchase of meals for these agents from Government funds while they are required to stay in high cost hotels during 24-hour-a-day protective assignments is not authorized generally under the rule in 53 Comp. Gen. 71 (1973). Specific authority of law may be sought to authorize those payments in the future, or exceptional cases may be presented on a case-by-case basis as indicated in 53 Comp. Gen. 71 (1973).



Acting Comptroller General
of the United States